

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

MICHAEL C. RATLIFF,

Plaintiff,

v.

DIRECTOR SKOLNIK, *et al.*,

Defendants.

3:07-CV-219-BES-RAM

ORDER

Before the Court is the Report and Recommendation of the United States Magistrate Judge (#35) ("Recommendation") entered on December 21, 2007, in which the Magistrate Judge recommends that this Court enter an order denying Plaintiff's Motion for an Order to Show Cause for a Preliminary Injunction and a Temporary Restraining Order (Doc #23/#25) filed on September 14, 2007. The Magistrate Judge further recommends that this Court enter an order denying Plaintiff's Ex Parte Request for Immediate Temporary Restraining Order and Preliminary Injunction (Doc #28) filed October 15, 2007. It is further recommended that this Court enter an order granting in part and denying in part Defendants' Motion to Dismiss (Doc #12) filed on September 6, 2007, and denial of Plaintiff's Motion for Entry of Clerk's Default (Doc #14) filed September 9, 2007. No objections have been filed.

The Court has conducted a *de novo* review of the record in this case, considering fully all relevant matters of record pursuant to 28 U.S.C. § 636(b)(1)(B) and Local Rule IB 3-2. After a review and determination in accordance with the requirements of 28 U.S.C. § 636 and applicable case law, and good cause appearing,

1 IT IS THEREFORE ORDERED that the Magistrate Judge's Report and
2 Recommendation (#35) entered on December 21, 2007, is adopted and accepted without
3 modification. Thus, in accordance with the Report and Recommendation,

4 IT IS HEREBY ORDERED:

5 Defendants' Motion to Dismiss (Doc. #12) is GRANTED IN PART and DENIED IN
6 PART as follows:

7 1. Defendants' request to dismiss Defendant Skolnik from this suit should be
8 DENIED.

9 2. Defendants' request to dismiss Defendants Palmer, LeGrand and Belanger, sued
10 in their official capacities, should be GRANTED.

11 3. Defendants' request to dismiss Defendants based on the theory of respondeat
12 superior should be DENIED.

13 4. Defendants' request to dismiss Plaintiff's due process claim (Count I) should be
14 GRANTED.

15 5. Defendants' request to dismiss Plaintiff's complaint based on the constitutionality
16 of the level system should be DENIED.

17 6. Plaintiff's request for injunctive relief in the form of abolishing NDOC's level
18 system should be DENIED.

19 7. Defendants' request to dismiss Plaintiff's retaliation claim (Count III) should be
20 DENIED.

21 8. Defendants' request to dismiss Plaintiff's Eighth Amendment claim for cruel and
22 unusual punishment (Count II) should be GRANTED.

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1 IT IS FURTHER ORDERED Plaintiff's Motion for Entry of Clerk's Default (Doc #14),
2 Plaintiff's Motion for Order to Show Cause (Doc. #23/#25) and Plaintiff's Ex Parte Request for
3 Immediate Temporary Restraining Order and Preliminary Injunction (Doc #28) are DENIED.

4 IT IS SO ORDERED.

5 DATED: This 18th day of January, 2008.

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10 UNITED STATES DISTRICT JUDGE
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